



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 175036

PRELIMINARY RECITALS

Pursuant to a petition filed on June 14, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services regarding Medical Assistance (MA), a hearing was held on July 27, 2016, by telephone.

The issue for determination is whether petitioner is liable for an MA overpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. Petitioner's husband reported new income for petitioner, on April 28, 2015. The increased household income led to a determination that the household was over the income limit for MA.

In late May, 2015, petitioner provided the respondent with information regarding pre-tax deductions for a health savings account, which allowed the household to regain eligibility.

3. The respondent subsequently learned that petitioner's employer had never deducted the health savings account monies, as requested by petitioner. The respondent then determined an MA overpayment in the total amount of \$10,199.34 covering the period of May, 2015, through March, 2016.
4. Petitioner was unaware that the requested pre-tax deduction was not processed by her employer.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:...

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

As of April 1, 2014 all childless adults became eligible for BC+ but with an income limit of 100% of the Federal Poverty Level, which, for a one-person household, is \$972.50. See Wis. Stat., §49.471(4)(a)4, and the MA Handbook, Appendix 50.1 for the current income limit. Thus when petitioner's income rose above that amount she lost BC+ eligibility.

Although I am sympathetic to petitioner's situation, I must uphold the overpayment. Petitioner testified credibly that she requested the pre-tax deduction, and provided a copy of that request to the respondent. Unfortunately, she never noticed that the pre-tax deduction was not deducted from her paycheck. It appears that petitioner's employer failed to act on petitioner's request, but I cannot blame that on the agency.

The failure to report a change in the recipient's financial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits does not have to be intentional or fraudulent. Because petitioner did not realize that her request for a pre-tax deduction was not acted upon, she mistakenly did not know that she lost her eligibility. The result, however, mistaken, was that the state MA program paid

over \$10,000 in BC+ premiums on petitioner's behalf for which petitioner was ineligible. Under the clear language of the statute, the agency is obligated to seek recovery of those payments.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she was not eligible; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

The agency correctly seeks recovery of an MA overpayment because petitioner failed to note that a pre-tax deduction reported to the respondent was not, in fact, ever deducted from her income after she was determined to be eligible for BC+.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

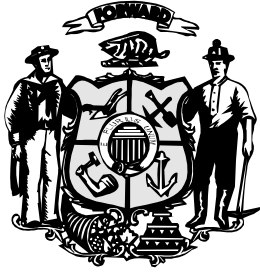
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of September, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 13, 2016.

Marinette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability